DC/New haven
95-CV-995
Hon. Covello

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

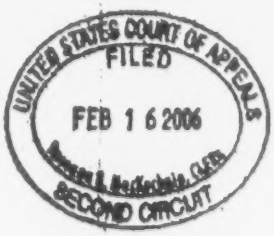
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the ninth day of February, two thousand and six.

PRESENT: HON. DENNIS JACOBS,
HON. RICHARD C. WESLEY,
HON. JOHN R. GIBSON*,

Circuit Judges.



- X

JEFFREY TIBBETTS,

Plaintiff-Appellant,

-v.- No. 05-0694-cv

JAMES DITTES, YALE DIVINITY SCHOOL, YALE CORP., THOMAS OGLETREE, PENELOPE LAURENS, and DETRA MACDOUGALL,

Defendants-Appellees.

---

*The Honorable John R. Gibson, United States Court of Appeals for the Eighth Circuit, sitting by designation.

- - - - - - - - - - - - - - - - - -
X

FOR APPELLANT: PAUL SCHIFF BERMAN, West Hartford, CT, on the brief.

APPEARING FOR APPELLEE: JEFFREY R. BABBIN, Wiggin and Dana LLP, New Haven, CT, for DEFENDANTS-APPELLEES.

Appeal from an order of the district court denying Plaintiff's motions to vacate.

UPON DUE CONSIDERATION, it is **ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

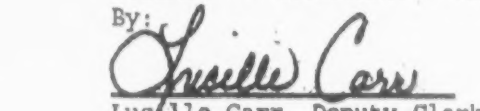
Jeffrey Tibbetts appeals from an order of the district court entered January 5, 2005 by the United States District Court for the District of Connecticut (Covello, J.) denying motions made under Fed. R. Civ. P. 60(b)(4). We assume familiarity with the facts, the procedural history, and the issues on appeal.

Tibbetts appeals the order denying his November 19, 2004 Rule 60(b)(4) "Motion to Vacate Judgment as Void for Violations of Due Process." In reviewing the order denying a 60(b) motion on appeal, this Court reviews "only the denial of the motion and not the merits of the underlying judgment for errors that could have been asserted on direct appeal." Branum v. Clark, 927 F.2d 698, 704 (2d Cir. 1991). Review by this Court is de novo. State Street Bank & Trust Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 179 (2d Cir. 2004), cert. denied, 125 S. Ct. 1309 (2005). Tibbetts fails to present, and the record does not reveal, any of the "highly convincing" evidence required to grant a motion to vacate the judgment as void. Kotlicky v. U.S. Fidelity & Guar. Co., 817 F.2d 6, 9 (2d Cir. 1987). Therefore, the district court did

not err in denying Tibbetts's November 19, 2004 60(b)(4) motion.

For the foregoing reasons, the judgment of the district is affirmed. Appellant is to bear costs. The mandate shall issue immediately.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
By:



Lucille Carr, Deputy Clerk